

## CONSOLIDATED ENGINEERING EXHIBIT

Elemental Public Media, Ch. 212C2, Babbitt MN, FID 768676  
January 2022

This is an amendment to application 0000167697, filed in the November 2021 Noncommercial Educational FM Reserved Band window for a new Class C2 station to serve Babbitt, MN.

This amendment is being filed pursuant to a settlement agreement with Two Harbors Community Radio under which Elemental Public Media agrees to modify its application to a different channel that will remove it from MX Group 123, as designated by the FCC.

The instant proposal changes from channel 202C2, as originally proposed, to channel 212C2. No changes in transmitter location, antenna height or directional pattern are proposed.

All contour plots are based on the FCC 30-arc-second terrain database unless noted otherwise. Population estimates are based on 2010 US Census Block data.

**Figure 1** shows that the 60 dBu contour of the proposed facility will completely encompass the proposed community of license, Babbitt, MN. Total area within this contour is 6088.8 square km with a population of 18,194 persons.

**Figure 2** demonstrates protection to first-adjacent stations KADU, Hibbing MN and KDNI, Duluth MN. There are no co-channel stations of concern.

**Figure 3** demonstrates protection to third-adjacent station WIRR, Hibbing MN. There are no second-adjacent stations of concern, and no Channel 6 TV stations within 257 km.

**Figure 4** demonstrates protection to all known Canadian allotments. Should Commission staff be aware of any additional Canadian interference concerns, applicant requests the opportunity to file a curative amendment.

**Figures 5 and 6** illustrate the existing 60 dBu NCE-FM service overlapping the proposed station's 60 dBu contour. The proposed station will provide first NCE-FM service to an area of 1688 sq km and population of 2685 (14.76% of total), with second NCE-FM service to an area of 4128 sq km and population of 14710 (80.85% of total). Aggregate first and second NCE-FM service will be provided to 17,935 persons (95.61% of total).

Based on FCC "FM Model" calculations assuming an EPA Type 1 two-bay antenna, the maximum radiofrequency power density attributable to the proposed station will not exceed 18.8 percent of the General Population / Uncontrolled

exposure guideline; therefore, the proposed facility should not have a significant environmental impact. In coordination with other users, applicant will reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic fields in excess of FCC guidelines.

Figure 1  
Proposed Coverage Contour

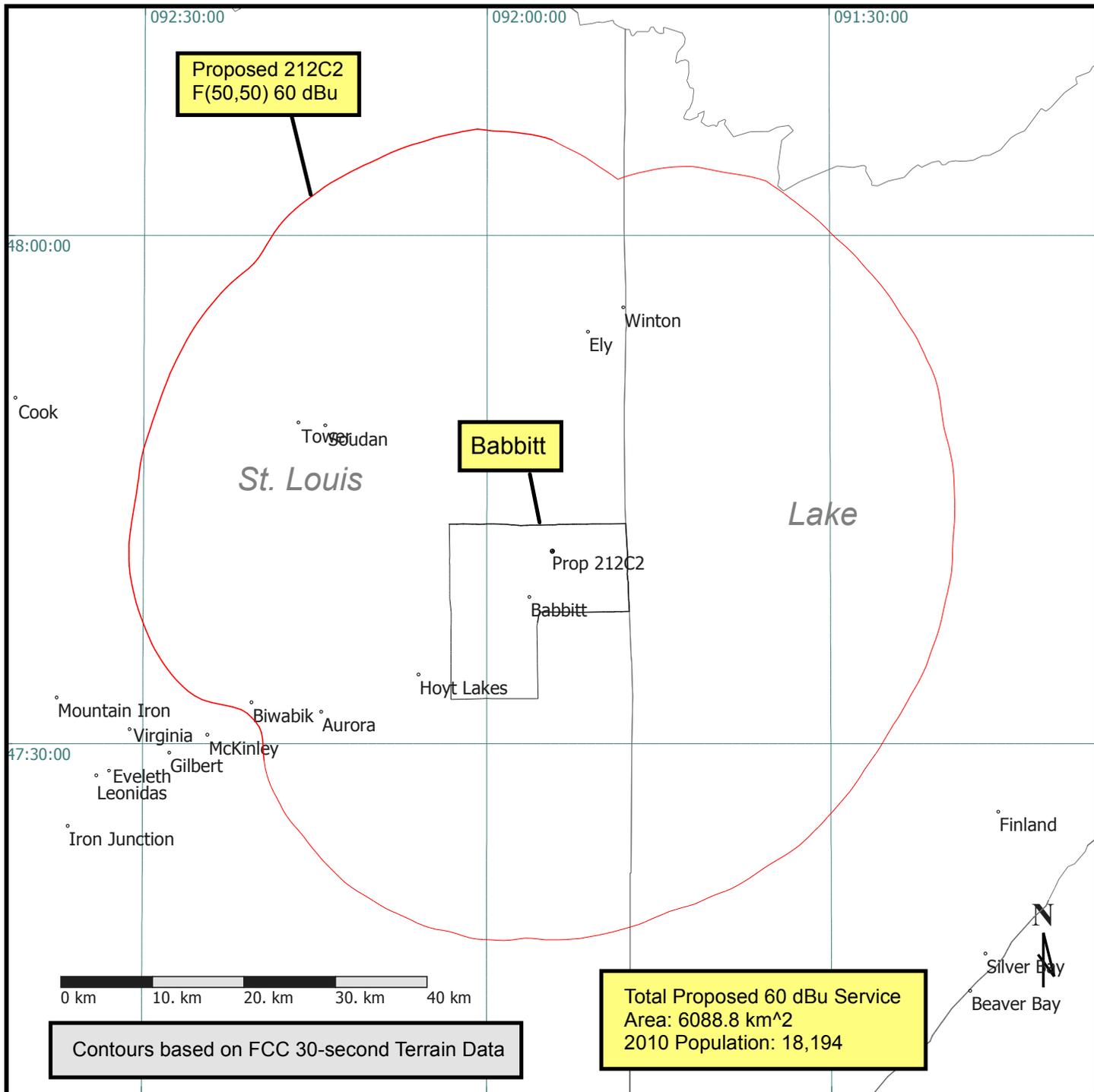


Figure 2  
 Co-Channel and 1st-Adjacent Contour Protection

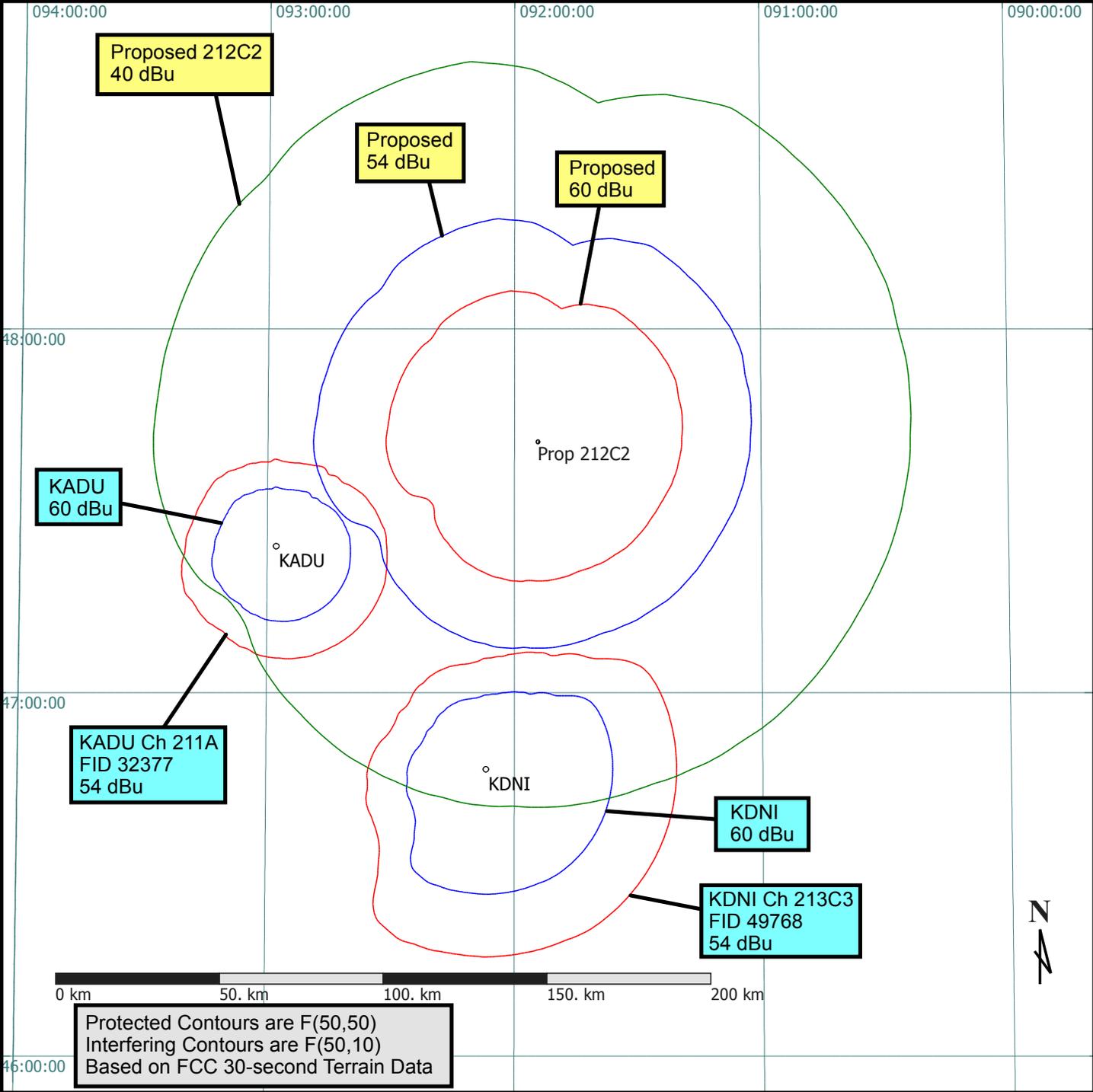
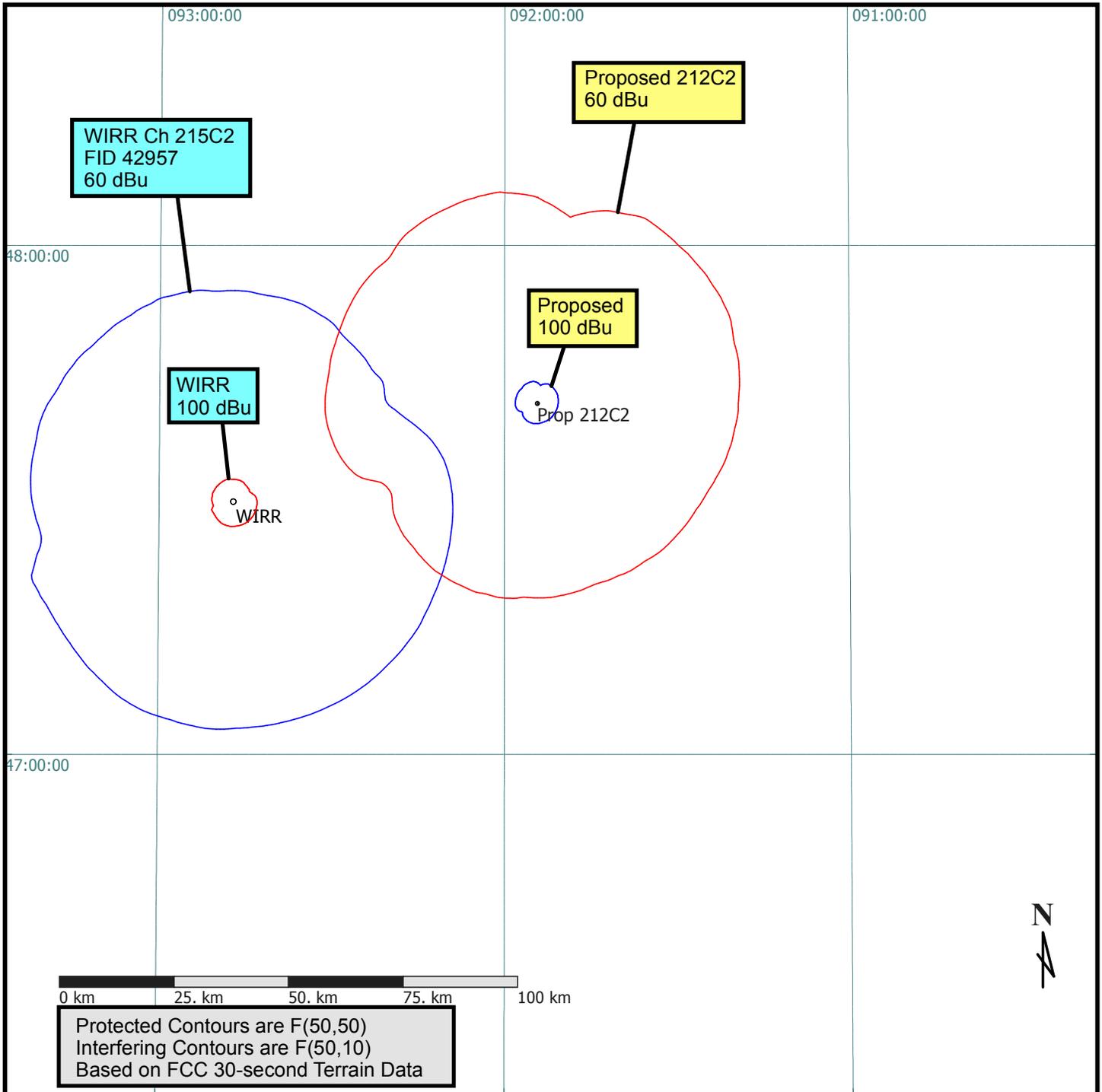


Figure 3  
2nd- and 3rd-Adjacent Contour Protection



# Figure 4 Contour Protection of Canadian FM Facilities

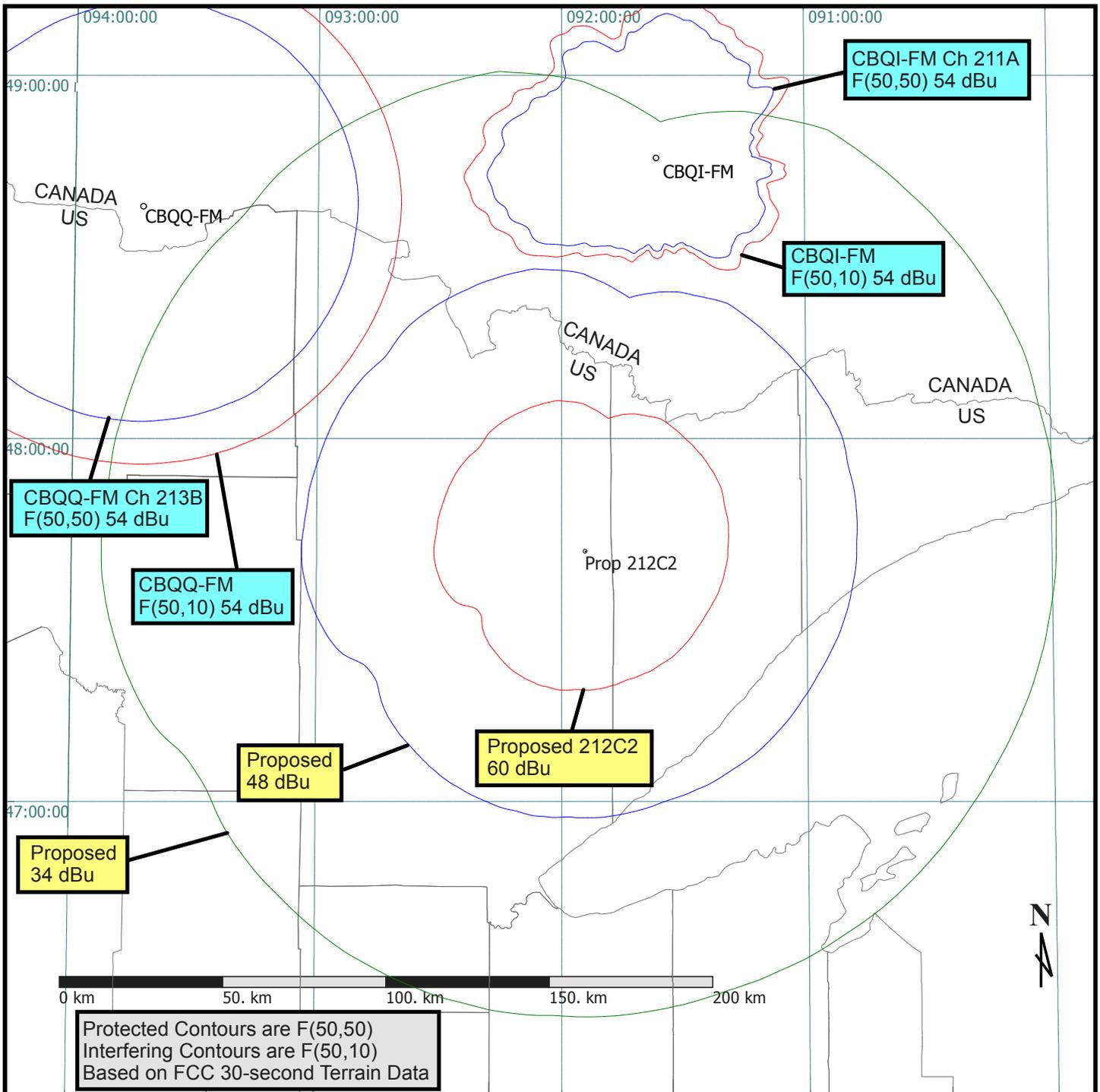
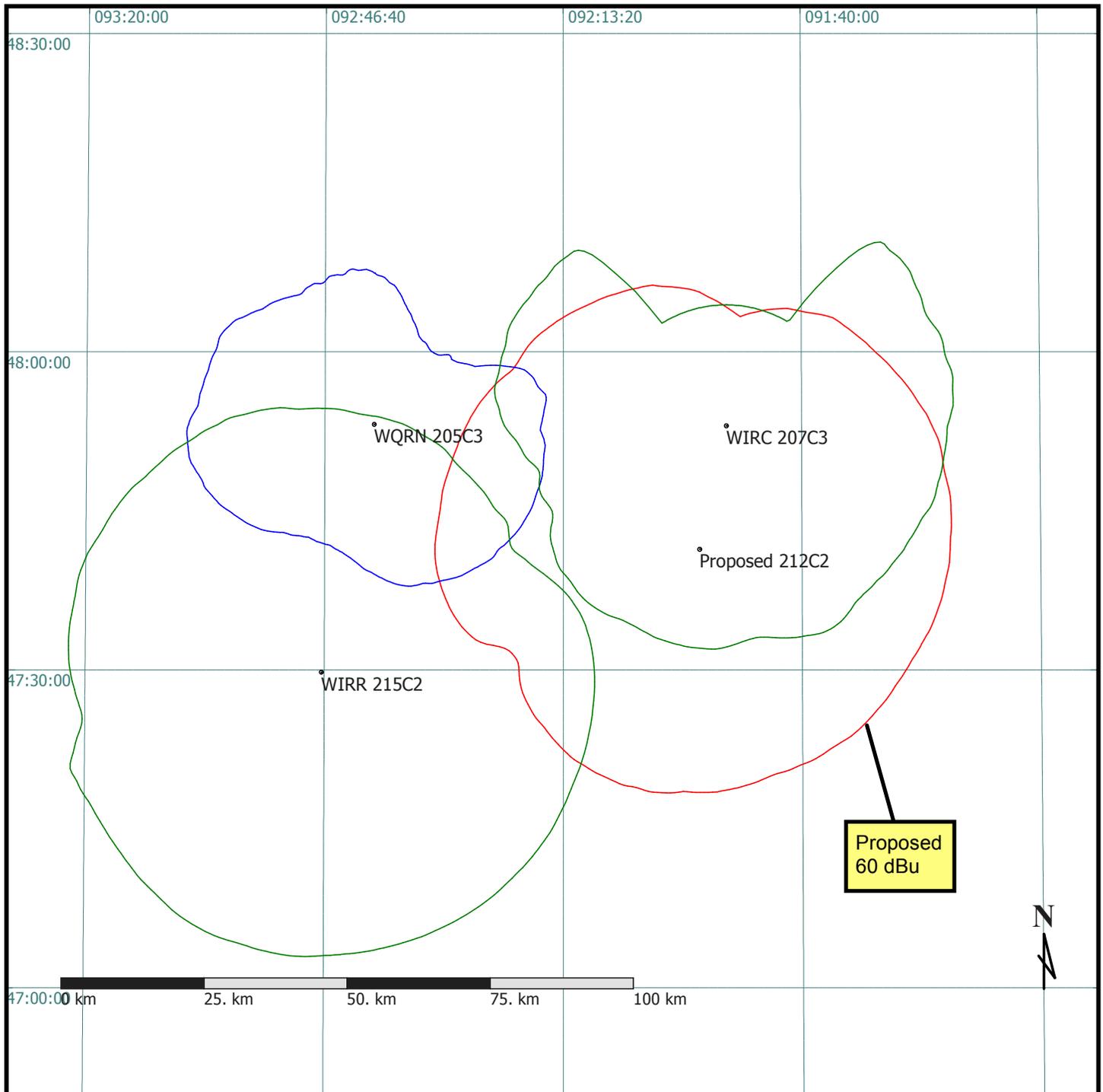
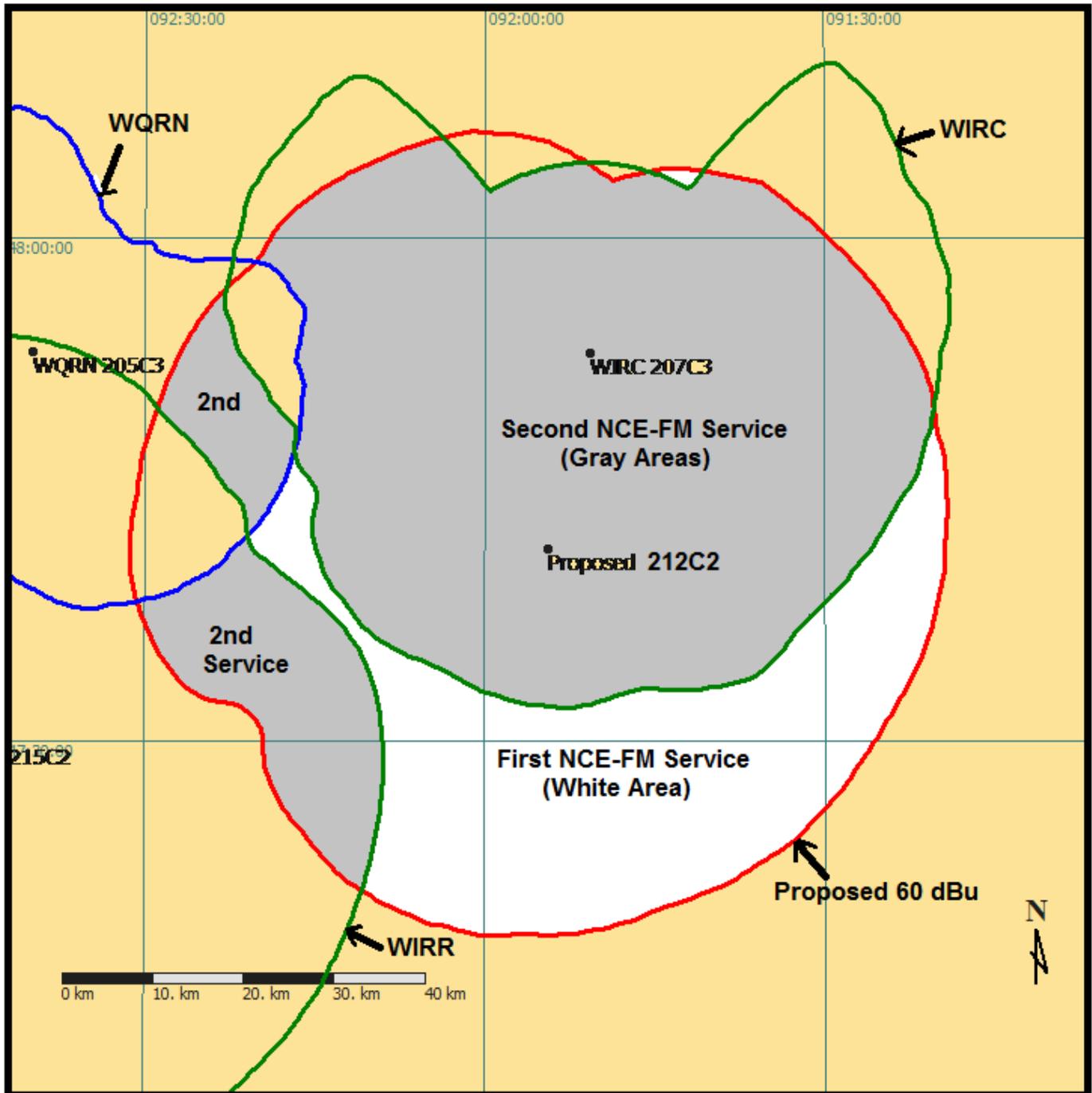


Figure 5  
Present NCE Aural Services Overlapping Proposed Service



# Figure 6 Section 307(b) NCE Aural Service Analysis

PROPOSED Total 60 dBu Service Area: 6088.8 km<sup>2</sup> 2010 Population: 18,194  
1st NCE-FM Service Area: 1688.6 km<sup>2</sup> (27.73%) Population: 2,685 (14.76%)  
2nd NCE-FM Service Area: 4,127.9 km<sup>2</sup> (67.79%) Population: 14,710 (80.85%)  
Aggregate 1st and 2nd Service Population: 17,395 (95.61% of total)



# SETTLEMENT AGREEMENT

This and Settlement Agreement (“Agreement”) is entered into by and between Two Harbors Community Radio (“Two Harbors”), and Elemental Public Media (“Elemental”) each of which may be referred to herein individually as a “Party” and collectively as the “Parties,” effective as of January 10, 2022 (“Effective Date”).

## RECITALS

**WHEREAS**, each Party individually applied to the Federal Communications Commission (“FCC”) for a license to operate a Noncommercial Educational FM radio station (“NCE”) on Channel 202 to serve various communities in Minnesota, as such applications are identified on Appendix A hereto;

**WHEREAS**, by Public Notice released on November 29, 2021 (DA 21-1476), the FCC announced that the Parties’ applications are considered mutually exclusive and assigned them to Group 123;

**WHEREAS**, the Parties wish to settle such mutual exclusivity in a manner that maximizes service to the public without significant cost burdens to the Parties;

**NOW, THEREFORE**, in consideration of their mutual promises, covenants, and obligations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **I. Engineering Resolution of the Remaining Mutual Exclusivity**

- A.** Elemental shall take all steps necessary to amend its application in FCC File No. 0000167697 for a new NCE station at Babbitt Minnesota (Facility ID No. 768676) (“Elemental Proposal”), to specify a different channel that will not cause mutual exclusivity with any remaining parties. Elemental’s technical consultant has confirmed an FCC-compliant spectrum availability for the Elemental Proposal on Channel 212, as a substitute for the mutually exclusive channel 202. As a result, Elemental is hereby bound to file to change its application to specify Channel 212 to eliminate the mutual exclusivity among the Parties’ proposals for new NCE stations.
- B.** Insofar as time is of the essence, Elemental agrees that it will file an amendment to its FCC application for the Elemental Proposal with the FCC no later than the **THIRD BUSINESS DAY AFTER THE EFFECTIVE DATE**.
- C.** Two Harbors agrees to provide any necessary support and assistance to further FCC approval of the channel substitution for the Elemental Proposal from the originally proposed Channel 202 to available spectrum on Channel 212 (or to any other Channel of Elemental’s choosing) to eliminate the parties’ mutual exclusivity in MX Group 123.

## II. FCC Filings and Compliance

- A. The Parties shall execute and file with the FCC the Joint Request for Approval for Settlement Agreement, attached hereto as Appendix B and such other filings as may be necessary to obtain the FCC's approval of this Agreement and the actions contemplated herein.
- B. The Parties agree to comply at all times with all applicable FCC rules governing such amendments and settlements.
- C. The Parties agree that they shall not file, nor cause the filing of, petitions to deny, informal objections or similar pleadings against any FCC applications subject to this Agreement, as long as this Agreement remains in force. The Parties further agree to withdraw any petitions to deny, informal objections or similar pleadings against any of the FCC applications subject to the Agreement within three business days of the Effective Date.

## III. MISCELLANEOUS

- A. **Attorneys' Fees and Costs.** Each Party shall bear its own attorneys' fees and costs arising from reaching this Agreement and shall not seek reimbursement from any other of the Parties for legal or engineering costs arising from assistance provided in furtherance of the Agreement's goals and terms. Any legal or engineering costs provided to assist in furtherance of the Agreement's goals and terms shall be considered in-kind consideration to other parties in order to meet contract law requirement for consideration.
- B. **Entire Agreement.** This Agreement contains the complete agreement between the Parties with regard to the matters set forth herein and supersedes any prior agreement, representation or warranties, verbal or written. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective executors, administrators, personal representatives, heirs, successors and assigns. This Agreement may not be amended or modified except by written consent of the Parties.
- C. **Advice and Counsel.** Each of the Parties expressly affirms that it has had an opportunity to engage its own legal counsel and technical consultants to review the terms and FCC filing obligations of this Agreement and is not relying on any representation made by any other Party in voluntarily entering into this Agreement.
- D. **Governing Law and Venue.** This Agreement shall be construed and interpreted in accordance with the laws of the State Minnesota without regard to any choice or conflicts of law principals thereof. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement shall be in a court of competent jurisdiction in Lake County, Minnesota.

- E. Additional Documents.** The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.
- F. Assignment.** No Party may sell, assign, delegate or otherwise transfer this Agreement, or any of its rights and obligations under this Agreement, without the prior written consent of the other Parties.
- G. Notices.** Any notice required to be given by one Party to the other under this Agreement will be delivered by Certified Mail to the signatory or signatories for the affected Parties; a Party may change its contact for notice by delivering a notice of change to the other Parties in the manner described in this Section IV.F.
- H. Severability.** If any provision of this Agreement is found to be illegal, invalid, or unenforceable, such provision will be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired, unless continued enforcement of the provisions frustrates the intent of the Parties.
- I. Construction.** This Agreement will be interpreted in accordance with its terms and without any strict construction in favor of or against either Party based on draftsmanship of the Agreement or otherwise.
- J. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original, but all of which taken together shall be deemed to be one and the same instrument. Signatures transmitted by electronic means shall have the same effect as original signatures.

***SIGNATURE PAGE TO FOLLOW***

**IN WITNESS WHEREOF**, the Parties have executed this Agreement effective as of the above date, and the persons signing below represent and warrant that they are duly authorized to do so.

**ELEMENTAL PUBLIC MEDIA**

By *Matthew Butler*  
Matthew Butler, President

**TWO HARBORS COMMUNITY RADIO**

By \_\_\_\_\_  
Leo Babeu, President

**APPENDIX A**  
**APPLICATIONS**

Elemental Public Media, Facility ID No. 768676 (FCC File No. 0000167697), Babbitt, MN

Two Harbors Community Radio, Facility ID No. 764466 (FCC File No. 0000167420), Two Harbors, MN

**APPENDIX B**  
**JOINT REQUEST FOR APPROVAL**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	NCE FM MX Group 123
	)	
<b>Elemental Public Media</b>	)	
	)	
Application for a New Noncommercial Educational FM Station Babbitt, MN;	)	FCC File No. 0000167697
	)	
and	)	
	)	
<b>Two Harbors Community Radio</b>	)	
	)	
Application for a New Noncommercial Educational FM at Two Harbors, MN	)	FCC File No. 0000167420
	)	

**JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT**

Elemental Public Media (“Elemental”) and Two Harbors Community Radio (“Two Harbors”) (collectively, “Parties”) have filed applications for new noncommercial educational FM stations (“NCEs”) which the Commission deemed mutually exclusive with each other under Group 123.<sup>1</sup>

The Parties hereby request that the Commission approve the Settlement Agreement, attached hereto as Exhibit A (the “Agreement”).

In the Agreement, (1) Elemental has agreed to voluntarily amend its application to specify a different channel to eliminate any remaining Mutual Exclusivity; and (2) Two Harbors has agreed to support and assist the other Parties to eliminate the mutual exclusivities so that both it and Elemental may become grantable singleton applicants on their respective, non-mutually exclusive channels.

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<sup>1</sup> Public Notice DA 21-1476 (Nov. 29, 2021).

As the Agreement resolves mutual exclusivities describe herein for MX Group 123, approval of the agreement will permit the three proposed licensees to provide new community-based content to their communities in the most rapid way possible. Approval of the agreement will further the public interest in increasing access to local and diverse programming.

The Parties respectfully request that the Commission approve the Agreement and issue LPFM construction permits for Elemental's amended proposal for authorization on Channel 212 and Two Harbors's original proposal for authorization on Channel 202.

Respectfully submitted,

**ELEMENTAL PUBLIC MEDIA**

/s/

**Matthew Butler, President**

2121 E Superior St.  
Duluth, MN 55812  
Tel. (612) 432-7955

**TWO HARBORS COMMUNITY RADIO**

/s/

**Michael W. Richards, Its attorney**

PO Box 5842  
Takoma Park, MD 20913  
Tel. (202) 657-5780

**Dated: Jan. 10, 2022**

**DECLARATION  
ELEMENTAL PUBLIC MEDIA**

The undersigned provides this Declaration on behalf of ELEMENTAL PUBLIC MEDIA. and hereby declares:

1. My name is Matthew Butler. I am president of Elemental Public Media. (“Elemental”).
2. This Declaration supports a settlement request among two mutually exclusive applicants for a new NCE FM station that the Commission has Designated as MX Group 123 in its Public Notice, DA 12-1476 (Nov. 29, 2021).
3. Elemental seeks Commission approval as it would be the most expeditious means to bring service to multiple communities in the shortest timeframe. This supports the public interest in greater diversity of content and listener choice that the proposed new NCE stations would create, as well as the public interest in fair distribution of service as defined in the Communications Act.
4. Elemental s application in this NCE filing window was not submitted for the advance purpose of reaching or carrying out such agreement.
5. Neither Elemental, nor its principals, has received any money or other consideration in excess of legitimate and prudent expenses as defined by Commission regulation.
6. No quantifiable consideration has been paid or promised.
7. In the absence of quantifiable consideration, no accounting of expenses for reimbursement are required.
8. The written agreement submitted for Commission approval represents the only agreement among the parties to the proposed settlement. No oral agreements concerning this settlement exist.

**Pursuant to 47 C.F.R. Section 1.16, I declare under penalty of perjury that the foregoing is true and correct. Executed on January 10, 2021**

*Matthew Butler*  
\_\_\_\_\_  
Matthew Butler